**IN THE HI**GH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
**CRIMINAL WRIT PETITION NO.2253 OF 2004**

Shri Shashikant Baliram Mhatre,
aged 36 years, resident of
Sunder Niwas, At & Post:
Village Kon, Taluka Bhivandi,
District : Thane
(Yerwada Central Prison,
Pune). .... Petitioner

- Versus -

1. Shri Yash Chakravarti,
Commissioner of Police,
Thane.

2. State of Maharashtra

3. The Superintendent of
Jail, Yerwada Central
Prison, Pune. .... Respondents

Sarvasri M.K. Kocharekar with Prakash Naik for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor, for the Respondents.

**AND**

**CRIMINAL WRIT PETITION NO.2254 OF 2004**

Shri Machchindra Anant Keni,
aged 29 years, resident of
At & Post: Village Kon,
Taluka Bhivandi,
District : Thane. .... Petitioner

- Versus -

1. Shri Yash Chakravarti,
   Commissioner of Police,
   Thane.

2. State of Maharashtra

3. The Superintendent of
   Jail, Yerwada Central
   Prison, Pune. .... Respondents

Shri M.K. Kocharekar for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor, for the Respondents .

**CORAM:** R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

**DATED :** FEBRUARY 14, 2005

**ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):**

1. Heard. Since common question of law arises in both the

petitions, though an additional point arise in Writ Petition No.2253 of 2004, we propose to dispose of both the petitions by this common judgment.

2. In both these Criminal Writ Petition Nos.2253 and 2254 of 2004, the detention orders in exercise of powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981, hereinafter referred to as "the MPDA Act" r/w the Government Order, Home Department (Special) No.DDS.1303/10/SPL.3(B), dated 23-6-2004 came to be issued on 30-8-2004 and 21-9-2004 respectively against both the detenus and they were also served upon the detenus on the same day. In the case of Shashikant Baliram Mhatre, the detenu in Criminal Writ Petition No.2253 of 2004, representation came to be made to the State Government on 10-9-2004. The same was rejected by the order dated 8-10-2004 and communicated to the said detenu under the letter dated 12-10-2004, which was received in the Yerwada Central Prison on 13-10-2004 where the said detenu has been detained. No representation was made by Machchindra Anant Keni, the detenu in Criminal Writ Petition

No.2254 of 2004.

3. The common ground of challenge in both the petitions is that the incidents alleged in the grounds in support of the detention orders do not reveal the facts which could disturb the even tempo of life leading to breach of the public order, though individually all those instances could perhaps be the instances of law and order problem. As far as the detenu Shashikant in Criminal Writ Petition No.2253 of 2004 is concerned, the detention order is challenged also on the ground of inordinate and unexplained delay in deciding the representation made by the detenu which has resulted in snapping of the live link between the alleged prejudicial activities and the need for issuance of the order of detention.

4. While challenging the detention orders on the ground of insufficiency of the materials which could reveal the disturbance or breach of the public order, and on that count the subjective satisfaction of the detaining authority being vitiated, reliance is sought to be placed in the decision in the matter of **Mustakmiya Jabbarmiya Shaikh v. M.M.**

**Mehta, Commissioner of Police and others,** reported in 1995 SCC (Cri.) 454. Attention is drawn to the incidents narrated in the grounds in support of the detention orders which, according to the learned Advocate for the petitioners, nowhere disclose the acts sufficient to disturb the public order or the even tempo of life in the concerned locality. The learned A.P.P., on the other hand, taking us through the grounds of detention and the narration of the incidents therein, has submitted that the same reveal the facts which disclose the activities of the detenus resulting in breach of the public order, and that such activities had created fear in the mind of the people in the locality. The learned Advocate for the petitioners, however, has also submitted that both the incidents referred to as being the basis for issuance of the detention orders are either shown to have occurred in the compound or in the office premises and not at public place or at a place in the public view and as such, therefore, there was no occasion for the members of the public being disturbed in any manner so as to arrive at the conclusion about the breach of public order on account of the activities of the detenus.

5. Perusal of the grounds in support of the detention orders refers to two incidents - one on 19-4-2004 and another on 25-4-2004, apart from an anonymous application dated 13-7-2004 and two in-camera statements. The grounds also disclose reference to an incident of about eight days prior to 19-4-2004 wherein the detenu Shashikant had demanded Rs.50,000/- as hafta from Shri Chunnam Satyadeo Mishra, a labour contractor who was attending the construction work of a building called "Dream Complex" in Village Kon and further having warned him to leave the site if he was not able to pay money. The incident of 19-4-2004 relates to threats given by the detenu Shashikant while enquiring about the amount of money which was asked for and further warning Mishra to leave the site if he was unable to pay the money. Again on 25-4-2004 both the detenus along with associates came to the site and demanded a sum of Rs.50,000/- and having failed to pay the same, surrounded Shri Mishra and assaulted him with fist blows and stick and created a sort of terror at the site. When witnesses like Rajiv Agrawal and Pawan Agrawal, working at the site, having noticed the act of assault on Mishra rushed to his help, the said Rajiv was also assaulted and threatened, due to which, being

frightened, he had to run away from the site. He was chased by the detenu and assaulted with fist-blows and kicks. On account of the terrorising acts on the part the detenus the people including Mishra became panicky and they did not dare to report the matter to the police immediately even though Mishra was admitted in the hospital on complain of pain in his chest on the following day. Apart from this incident, the anonymous application dated 13-7-2004 alleged some illegal activities on the part of the detenu and on that count the life of the residents having become miserable and they were feeling helpless and the application also disclosed that the detenu Shashikant was threatening and compelling to purchase the building materials from the detenu for the purpose of construction of houses in the village and that he was convicted by the Court but was released on bail. The in-camera statements were recorded - one of a civil contractor and another of a building supervisor. The statement of the civil contractor disclosed that on 16-6-2004 in the morning, he had been to village Kon at the site of his construction to supervise the work and while the witness was discussing with his supervisor about construction work and its progress, the labourers being present at the site, around 11.45 hours, the

detenu all of a sudden, arrived there. At that time, the detenu was armed with a revolver, whereas his associates Machhindra Keni and Sanjay Nikam were armed with chopper and knife, respectively. As soon as the detenu reached there, they threatened the witness at the point of revolver, saying "का रे हरामखोर, कोणाला विचारून बांधकाम चालू केलेस? मला विचारल्याशिवाय या भागात कोणतेही काम होत नाही. तूला माहित नाही काय? " and demanded Rs.50,000/- from him. Since the construction was duly authorised one, the witness refused to pay. On his refusal, the detenu was enraged and slapped the witness due to which the latter lost his balance and fell on the ground. The detenu with an intention to terrorise the witness and thereby to serve his purpose further pointed the revolver towards the head of witness and threatened the witness, saying "शहाणपणा केलास तर ढगात पाठवीन" and further assaulted him with kicks. Since the detenu and his associates were armed with deadly weapons, the witness did not dare to resist them. The associates of the detenu - Machhindra Keni and Sanjay Nikam also assaulted the witness with fist blows. The witness could not bear the assault and raised hue and cry for help. The supervisor and labourers noticed brawl and assault on witness. Instead of

helping the witness, all of them ran away from the site. The passers-by on the road near the place of incident also scampered away and nobody came forward to help the witness or to resist the detenu and his associates and as such the public order was disturbed. The detenu forcibly took out Rs.5000/- from pant pocket of the witness.. The detenu's associate Machhindra Keni forcibly removed a gold chain and a RADO wrist watch from the person of the witness and further asked him to arrange for the sum of Rs.50,000/- ready as demanded earlier. The witness in his statement recorded on 2-7-2004 has further stated that he works as the supervisor at the construction work which is being done at Toll Naka in village Kon and also supplies building materials at the site of construction and about a month prior to his statement the detenu had demanded Rs.25,000/- as a `hafta' from him to allow him to supply building material at the site of construction. Since he had no money, he did not pay attention towards the demand by the detenu and therefore the detenu had a grudge against him. On 2-7-2004 the witness was present in the office at construction site and was waiting for his employer. Around 17.00 hours, the detenu alongwith his two associates namely Machhindra Keni

and one other, all of a sudden, entered the office. At that time, the detenu was armed with a chopper, whereas his associate Machhindra Keni and one other were armed with knives. As soon as witness noticed them, he got frightened. The detenu caught hold of collar of his shirt and threatened him in filthy language saying, "मादरचोद दादा बनला काय? आमचे पैसे काय तुझा बाप देणार काय?" and kicked him. The associate of the detenu Machhindra Keni while pointing a knife at him took away a sum of Rs.1500/- from his pocket. To terrorise the witness, the detenu broke the drawer of a table in the office in which a bundle of currency notes of Rs.100/- denomination (Rs.10,000/- in total) were stored and took away the currency. Since the money belonged to his employer, the witness requested the detenu to spare the same. On his resistance, the detenu got enraged and threatened him in filthy language, saying, "तुझ्या शेठची गांड. त्याला एक ब्लॉक माझे नावावर करण्यांस सांग." The incident was witnessed by other employees working in the office, however, instead of helping the witness they ran out of the office, precisely due to fear. The witness raised hue and cry for help. However, nobody came forward to help him. The labourers working at the construction site noticed the

brawl. They also scampered away from the place, leaving their respective job and nobody dared came forward to help the witness or to prevent the detenu and his associates and as such the public order was disturbed. The detenu further threatened the witness – saying "कोठे तक्रार करावयाची असेल तेथे तक्रार कर. माझे कोणीही वाकडे करू शकत नाही. मला शशी म्हत्रे म्हणतात.

6. The narration of the above incidents undoubtedly reveal that those instances cannot be said to be merely leading to law and order problem. The acts which apparently disclose that the witnesses were terrorised and discouraged from helping the complainant and to disclose the facts to the police on account of the fear psycho created as a result of the illegal activities on the part of the detenus, the same certainly reveal the impact of such activities on the public life in the locality which in turn disclose breach of public order. Being so, the contention that two of the acts having occurred - one in the office premises and one at the site of the construction within the compound wall that by itself could not lead to the conclusion that those instances did not lead to the breach of the public

order but could be, at the most, a law and order problem. It is well-settled that an act in certain circumstances could be stated to lead to breach of the law and order can in different situation lead to breach of the public order. In a situation where an act results in creation of fear psycho amongst the members of the public or the persons who witness the incident which stupefies them and discourages them from coming forward to help the victims and/or to depose about the incident and to reveal the same to the police or the investigating agency, certainly it would disclose disturbance in the even tempo of life in the locality and the same will in turn reveal the breach of public order even though actual incident of assault might have taken place in an area enclosed by the compound wall or even in the office premises. The facts narrated in the grounds in support of the order apparently, therefore, disclose the instances of breach of public order and therefore the contention that the same do not reveal instances of breach of public order cannot be accepted. In fact, the Apex Court in **Mustakmiya Jabbarmiya Shaikh' s**case (supra), while bringing out the difference between the activities which can lead to the breach of public order and those which could lead to the law and order problem had held

that:-

> "In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of distubance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an

> ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality."

The activities in the nature of demanding “hafta” without any authority of whatsoever nature to demand any such amount of money, and without any obligation on the part of the person from whom such money is demanded and threatening such person for not complying with such illegal demand and also assaulting persons desiring to the help the victim can hardly be said to be an act directed only against an individual or few individuals. The persons with such characteristics and indulging in such activities are absolute menace to the society at large and certainly disturb the even tempo of life in the locality resulting in breach of public order. Viewed from this angle, therefore, and considering the facts narrated in the grounds in support of the impugned order of detention, there is no substance in the contention of the petitioners that the activities of the petitioners do not disclose breach of public order. The law laid down in the

decision of the Apex Court in Mustakmiya Jabbarmiya Shaikh' s case, no way helps the petitioner to call for interference by this Court in the impugned orders.

7. As regards the ground relating to the delay in disposal of the representation raised in Criminal Writ Petition No.2253 of 2004, the affidavit filed by the Under Secretary, Home Department (Special), it is revealed that the representation was received in that office on 10-9-2004, late in the evening. The 11-9-2004 and 12-9-2004 were holidays. Parawise comments were called from the detaining authority on 13-9-2004. The parawise comments were received by the Department on 17-9-2004. There were holidays on 18-9-2004 and 19-9-2004. The papers were scrutinised and the note was prepared on 20-9-2004 and was forwarded to the Under Secretary on the same day. The Addl. Chief Secretary was required to attend meeting regarding naxalite problems at Hyderabad on 20-9-2004 and 21-9-2004. The Under Secretary forwarded the same for consideration of the Addl. Chief Secretary (Home) who, on going through the representation returned the same to the

Department with certain queries on 24-9-2004. The comments were called from the sponsoring authority on the same day which were received by the Department on 29-9-2004 vide letter dated 28-9-2004. Thereafter the papers were processed and forwarded to the Under Secretary on 30-9-2004. After careful consideration of the papers by the Under Secretary, same were forwarded to the Deputy Secretary who, on further careful consideration of the same, forwarded it to the Addl. Chief Secretary (Home) on 1-10-2004 and the Addl. Chief Secretary (Home) after carefully going through the papers asked the Deputy Secretary to flag the papers relating to the earlier detention order and returned the file to the Deputy Secretary on 4-10-2004. There were holidays on the 2-10-2004 and 3-10-2004. From 4-10-2004 to 7-10-2004 the Addl. Chief Secretary was on election tour in respect of the State Assembly. The Addl. Chief Secretary after careful and independent consideration of the representation rejected the same on 8-10-2004. The files were submitted to the Desk Officer on 11-10-2004 The rejection reply was sent on 12-10-2004 which was received at the Yerwada Central Prison on 13-10-2004.

8. According to the learned Advocate for the petitioners, there is no explanation for the delay of three days i.e. from 17 to 20-9-2004 as also for four days i.e. from 7 to 11-10-2004. The period 17-9-2004 to 20-9-2004, however, disclose that 18-9-2004 and 19-9-2004 were holidays. Obviously there does not appear to be any delay of three days during the said period, as is otherwise contended. As regards the period from 7th to 11-10-2004, the 9 th & 10th of October, 2004 were holidays. The order was made on 8-10-2004 and the file was received on 11-10-2004 by the Desk Officer and on the very next day, the reply was prepared. It is also said that the period of three days between 1-10-2004 to 4-10-2004 spent on account of instruction given by the Addl. Chief Secretary to the Deputy Secretary to flag the papers relating to earlier detention order. Undoubtedly, if the period of three days was spent for merely flagging the papers, then it would be certainly a case of failure on the part of the authorities to explain the delay of three days satisfactorily. However, it is to be noted that during the relevant period, 2nd & 3rd October, 2004 were holidays. Being so, in between, it cannot

be said to be a case of unexplained delay.

9. It is also to be noted that while considering the point relating to the delay, what is necessary is to ascertain whether the representation has been considered within reasonable period. In the case in hand, the representation was received on 10-9-2004 and was disposed of on 8-10-2004. The period spent for consideration of the representation at various levels and by various officers has been explained with necessary details. It is not a mere case of movement of file from one table to another. The affidavit clearly discloses that each officer who was required to go through the representation had considered the representation and thereafter it was forwarded to the higher authority. Being so, it cannot be said that the delay has remained unexplained.

10. The learned Advocate for the petitioners has placed reliance in the decision in the matter of **Harish Pahwa v. State of U.P. and others,** reported in AIR 1981 SC 1126 in support of his contention about the failure on the part of the respondents to explain the delay. In the said case, the

Apex Court had held the explanation to be unsatisfactory for two reasons - the first being that there was no explanation at all as to why no action was taken in relation to the representation on 4th, 5th and 25th of June, 1980, and secondly, the respondents were unable to explain as to why the matter was referred to the Law Department as that Department was in no way concerned with the consideration of the representation. That is not the case in the matter in hand.

11. The learned A.P.P. has rightly placed reliance in the decisions in the matters of **Sri Ram Sukrya Mhatre v. R.D. Tyagi and others,** reported in AIR 1994 SC 1134 and **Mst. L.M.S. Ummu Saleema v. B.B. Gujaral and another,** reported in AIR 1981 SC 1191. In the case of **Sri Ram Sukrya Mhatre** (supra), the Apex Court while reiterating its earlier decision in **Abdul Salam alias Thiyyan v. Union of India** {AIR 1990 SC 1446} held that on the question of delay in disposal of the representation by the Central Government no hard and fast rule as to the measure of reasonable time can be laid down and each case has to be considered from the facts presented therein and if there is no negligence or

callous inaction or avoidable red tapism on the facts in that case, it would not warrant interference. In **B.B. Gujaral's** case (supra), the Apex Court had held that:

> "The occasional observations made by this Court that each day' s delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae. Considered in that light, can it be said that there was any unreasonable delay in the present case? The representation was despatched on 5-2-1981 and was received in the office of the detaining authority on

13-2-1981. Apparently it was in postal transit from 5th to 13th. It was put up before the detaining authority on 19-2-1981 and disposal of that very day. From the records produced before us we notice that the detaining authority, Shri B.B. Gujral, was not available from 13th to 16th as he had gone abroad. He returned on 16th and considered the matter on 19th. The learned counsel for the detenu urged that the absence of the detaining authority from India cannot be allowed to violate the fundamental right of the detenu to have his representation considered with the utmost expedition. We agree that in such cases appropriate arrangements must be made for considering the detenu's representation. Apparently, it was not thought necessary in the present case as Shri Gujral was returning on 16th, that is, within a few days. After the 16th, the delay, if any, was for a period of three days only. It can hardly be described as delay though

one wishes there was no room even for that little complaint. We are of the view that there has not been any unaccountable or unreasonable delay in the disposal of the representation by the detaining authority."

12. Apparently, when an officer is required to attend some other most urgent important and unavoidable official work, merely because a day or two are lost in the process, that itself cannot be construed as unreasonable delay or unexplained delay so as to justify interference in the order of detention solely on such ground.

13. For the reasons stated above, and as no other ground being canvassed, there is no case made out for interference in the impugned detention orders, and the petitions therefore fail and are hereby dismissed. The rule in both the petitions is discharged with no order as to costs.

**(R.M.S. Khandeparkar, J.)**

**(P.V. Kakade, J.)**